

## **REMARKS**

Reconsideration and withdrawal of the rejections of this application and consideration and entry of this paper are respectfully requested in view of the herein remarks, which place the application in condition for allowance.

### **I. STATUS OF CLAIMS AND FORMAL MATTERS**

Claims 14, 15 and 17-26 are now pending in this application. Claims 19-26 has been amended added to encompass subject matter where the herbicide is paraquat, glufosinate or glyphosate and the carrier is polyacrylate. (Claims 23 and 28 add the component silicon dioxide which is the generic name for Sipernat 22S). No new matter has been added.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

### **II. THE 35 U.S.C. §102 REJECTIONS HAVE BEEN OVERCOME**

Claims 14, 15, 17 and 18 were rejected as allegedly being anticipated by Narayanan et al. (U.S. Patent 5,231,070 - "Narayanan").

Claims 14, 15, 17 and 18 were rejected as allegedly being anticipated by Sanders (U.S. Patent 5,635,447).

The applicants request reconsideration of these rejections for the reasons which follow. Rather than repeat the applicants' previous argument, the applicants summarize the points which still have not been addressed by the Office Action.

First, one of the recurring arguments previously made by the applicants is that both the Narayan and Sanders reference teach the use of herbicides for their art-recognized effects, i.e. use of a **pre-emergent** herbicide to treat harmful plants **pre-emergently** or the use of **post-emergent** herbicide to treat harmful plants **post-emergently**.

The mere fact that Narayanan and Sanders refer to pre-emergent and post-emergent herbicides is not evidence that either reference teaches the use of **POST-emergent** herbicides to treat harmful plants **PRE-emergently** which is contrary to the normal usage of such herbicides. Furthermore, the declaration by Dr. Bicher submitted with the previous response shows that one

of ordinary skill in the art could not presume that merely using a post-emergent herbicide in a pre-emergent manner would result in herbicidal effect, i.e. when a soluble liquid outside the scope of the applicants' claimed invention was used, no herbicidal activity was detected for pre-emergent use. Therefore

(a) Narayan:

- (i) teaches a method of inhibiting the leaching of an active plant growth regulating agrichemical NOT controlling the growth of undesirable harmful plants pre-emergently;
- (ii) does NOT teach that controlling the growth of undesirable harmful plants pre-emergently can be accomplished with a post-emergence herbicide;

(b) Sanders:

- (i) teaches enhancing the absorption/penetration of an herbicide into a plant cell/tissue NOT controlling the growth of undesirable harmful plants pre-emergently;
- (ii) does NOT teach that controlling the growth of undesirable harmful plants pre-emergently can be accomplished with a post-emergence herbicide

Second, with regard to the dependent claims, neither Narayanan nor Sanders teach the limitations of claims 21-28. These claims refer to compositions with paraquat, glufosinate and/or glyphosate with a carrier which is a polyacrylate. Neither Narayanan nor Sanders ever teaches glufosinate with a polyacrylate with or without silicon dioxide.

Furthermore, having Narayanan and Sanders merely mentioning paraquat, glyphosate and polyacrylate does not qualify as describing the applicants' invention in as specific detail as the applicants especially when the state of the art as proven by Dr. Bicher's declarations shows that randomly picking the herbicide and carrier will not necessarily result in herbicidal effect. Further still, neither Narayanan nor Sanders describe this combination with silicon dioxide.

Therefore, for any of the above reasons, the applicants' claims are not anticipated by Narayanan or Sanders.

**CONCLUSION**

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,  
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